Supreme Court, U.S.
FILED
NOV 27 1996
CLERK

NO. 96-593
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1996

LIVING SPRINGS RETREAT, a Religious Corporation,

Petitioner,

v.

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO; and RUTH A. CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Respondents.

On Petition For A Writ Of Certiorari
To The New York Supreme Court, Appellate Division:
Second Judicial Department

REPLY BRIEF OF PETITIONER

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Petitioner files the following reply to respondents' briefs:

1. Respondents Town of Putnam Valley and individual assessors (hereafter "Putnam Valley") argue that an alleged noncompliance with a state statute of limitations is a sufficient and independent state ground barring review by this Court. To support this contention, they cite *Paschall v. Christie-Stewart, Inc.*, 414 U.S. 100 (1973). But *Paschall* is inapplicable to this case. In *Paschall* a quiet title action was filed by an oil and gas lessee to determine whether mineral deed holders or resale tax deed purchasers were owners of the minerals and entitled to royalties produced under the lease.

The trial court determined two issues: (1) the tax sale proceedings were constitutionally valid and (2) the mineral deed holders' claim was barred by the state statute of limitations. The court concluded, therefore, that the resale tax deed purchasers were the owners of the minerals. The mineral deed holders appealed. The Oklahoma Court of Appeals reversed addressing only the Fourteenth Amendment due process issue but was reversed by the Oklahoma Supreme Court which also addressed only the constitutional issues.

After reviewing the record (including the trial court judgment), this Court was unable to determine whether the state statute of limitations finding by the trial court constituted an independent and, possibly, unchallenged ground for the judgment. This Court then vacated the Oklahoma Supreme Court's judgment and remanded the case so the state supreme court could consider whether the mineral deed holders had preserved their right to challenge the trial court's statute of limitations holding, and, if so, whether under state law the statute of limitations claim independently barred the mineral deed holders' claim. On remand, the state supreme court determined that the statute of limitations issue had not been

preserved and reaffirmed its original judgment on the federal issue. *See* 544 P.2d 505 (Okla. 1974).

But, unlike *Paschall*, the trial court here did not find for the respondents with regard to the statute of limitations issue. App. at 10a. Putnam Valley acknowledged the court ruled against them on the statute of limitations question, and there was no subsequent reversal by the appeals court. Thus, there is no *existing* independent and unchallenged ground for the state court's judgment, which is the subject of this Petition.

Putnam Valley is not seeking remand so that the state court may determine whether there is a preserved independent state issue. Rather, it seeks dismissal because the state appellate court *might have* ruled differently had it elected to address the state issue. The consequence of remand, as in *Paschall*, is totally different from a dismissal. Such a course of action would deprive petitioner of any potential Supreme Court review of the federal issues upon the mere speculation that the state appellate court *might have*, but did not, rule on the issue.

In *Michigan v. Long*, 463 U.S. 1032, 1038 (1983), this Court noted it had not up to that time "developed a satisfying and consistent approach for resolving . . . vexing [questions involving whether or not nonfederal independent and adequate grounds support the judgment]." The *Long* Court stated that "[t]he process of examining state law is unsatisfactory because it requires . . . [the Court] to interpret state laws with which . . . [the Court is] generally unfamiliar, and which often . . . have not been discussed at length by the parties." *Id.* at 1039.

The *Long* Court stated that "outright dismissal of cases is clearly not a panacea because it cannot be doubted that there is an important need for uniformity in federal law, and that this need goes unsatisfied when . . . [the Court] fail[s] to

review an opinion that rests primarily upon federal grounds and where the *independence* of an alleged state ground is not apparent from the four corners of the opinion." *Id.* at 1040.

This Court, *id.* at 1040-41, then declared:

> Accordingly, when, as in this case, a state court decision fairly appears . . . to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. . . . If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.

In equally responsive language to Putnam Valley's argument, the *Long* Court, quoting *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940), stated "'it is . . . important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of a validity under the federal constitution of state action.'" *Id.* at 1041.

The issues in the Appellate Division decision, which petitioner is asking this Court to review, are two-fold: (1) whether its determination that the real property was not used primarily for a religious purpose is constitutionally permissible; and (2) whether the taxing authority violated the neutrality and equal protection requirements of the First and Fourteenth Amendments.

It is clear the second issue was decided exclusively on federal grounds. With regard to the first issue, although the

Appellate Court failed to discuss federal constitutional requirements as to the "primary use" issue, respondents do not contest petitioner's assertion that federal questions were raised at all stages with regard to this issue. *See* Petition at 11-15. The "primary use" issue decided below is "so interwoven with . . . [federal constitutional points] as not to be independent." *See Oregon v. Kennedy*, 456 U.S. 667, 671 (1982); *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985).

But Putnam Valley has also failed to disclose other relevant information which should weigh against the dismissal of this petition. Two complaints were consolidated for trial. The first pertained to tax years 1980 through 1984 for monies had and received and sought a refund of monies paid under protest. App. at 25a. The second complaint sought refund of taxes paid for the years 1985 and 1986. App. at 33a.

Putnam Valley on July 13, 1988, filed its answer to the first (1988) complaint which did not assert the statute of limitations defense. *See* Supp. App. at 1-2sa *infra*.[1] Respondent Mahopac Central School District (hereafter "school district") was the only party to raise the statute of limitations defense. It filed a pre-answer motion to dismiss claiming not to be a proper party and raising the statute of limitations defense. Judge Dickinson on September 21, 1988, dismissed the complaint with respect to the school district. *See id.* at 3-4sa. However, this order was reversed on March 6, 1990, by the Appellate Division as to both issues. *See id.* at 5-6sa. No further appeal was taken from that decision. On October 30, 1989, the school district had filed a motion to dismiss the second (1989) complaint alleging the action was barred by the statute of limitations. *See id.* at 9-10sa. On December 5,

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[1]"Supp. App. at __sa" refers to the Supplemental Appendix herein.

1989, Judge Dickinson denied that motion. *See id.* at 11-13sa. On April 24, 1990, the school district filed its answer to the second complaint reasserting the defense. *See id.* at 14-16sa. But the school district did not appeal or perfect a post-judgment cross-appeal. The earlier decision is *res judicata* with respect to the school district.

Putnam Valley on October 26, 1989, filed an answer raising the statute of limitations defense to the second (1989) complaint. *See id.* at 7-8sa. However, since Putnam Valley did not raise any statute of limitations defense in its answer nor move to dismiss as to the first (1988) complaint, it failed to either raise or preserve that defense as to the first complaint. Under New York law, CPLR 3211(e), such a defense must be raised either as an affirmative defense or in a motion to dismiss the pleadings, or it is waived.

Moreover, Putnam Valley wrongly contends that *Kahal Bnei v. Fallsburg*, 78 N.Y.2d 194 (1991), is controlling. That decision did not overturn prior case law relied upon earlier by the Appellate Division. Petitioner's complaints were for monies had and received for taxes paid under protest. In *Kahal* the plaintiff did not pay the taxes and so was required to seek a declaratory judgment rather than sue for monies had and received. Thus, the *Kahal* plaintiff was subject to the four month statute of limitations. An action for money had and received, to which the six year statute of limitations applies, is permitted under New York law "in instances where . . . money has been collected for an illegal tax assessment." *Parsa v. State,* 64 N.Y.2d 143, 148 (1984). *See also Niagara Mohawk Power Corp. v. City School Dist.*, 59 N.Y.2d 262 (1983). The statute of limitations for a refund of money collected for an illegal tax assessment, of course, would not commence until the monies are paid under protest which brings the action within the six year period of limitations as to

all taxable years at issue.

2. As to the "primary use" issue, respondents ignore the unambiguous holding by the Appellate Division. That decision presents a pure legal question without factual dispute. In short, it holds that an otherwise eligible religious organization may be denied state real property tax exemption because: (a) its program is directed to nonadherents of the faith; (b) advertising is directed at the general public; and (c) participants in its programs are not *required* to take part in religious services, indoctrination, or similar activities.

Oddly, Putnam Valley's argument that Living Springs should be denied tax exemption fails to analyze the several constitutional concerns. In fact, the argument does not discuss the activities that occur on the subject property, including the reconditioning center. Instead, it focuses on a vegetarian restaurant and health food store located in New York City. But this argument must fail for at least three reasons:

(a) The vegetarian restaurant and health food store did not even open until October of 1985. Appellate Div. J.A. at A-397-98. The trial court's noted this:

> During the latter years at issue the residences were used in part by workers in New York City health food store and vegetarian restaurant also founded by William Dull.

App. at 13a. Thus, Putnam Valley's sole attack as to this issue is completely irrelevant with respect to the first (1988) complaint seeking a refund of tax monies for tax years 1980, 1981, 1982, 1983, and 1984. *See* App. at 25a.

(b) Petitioner established a separate corporation, Metro Lifestyle Ministries, Inc., a 501(c)(3) nonprofit charitable

corporation for the New York City activities. Appellate Div. J.A. at A-673-74.

(c) The Appellate Court did not at all base its holding on the vegetarian restaurant and health food store activities.

3. With regard to the religious neutrality and equal protection claim, Putnam Valley seeks to distinguish between a religiously operated reconditioning center directed to the public and a religious retreat used by monks of the Friars of Atonement and a retreat used by a scout group sponsored by the Methodist Church. But Justice O'Connor noted that not only is there the constitutional requirement of not "making irrational distinctions among taxpayer," *Hernandez v. Commissioner of Internal Revenue*, 490 U.S. 680, 707 (1988) (O'Connor, J., dissenting), but there is an "even higher standard of equality of treatment among *religions* that the First Amendment imposes. . . ." *Id.* "[T]he line between the taxable and the immune" should not be "drawn by an unsteady hand." *Id.* at 712.

Putnam Valley continues to pursue the concept that the line may be drawn between property used to serve church members and ministries directed to the general public. But such a distinction results in "the differential application of a standard based on constitutionally impermissible differences drawn by the Government among religions" which concerned Justice O'Connor in *Hernandez*, 490 U.S. at 712.

4. Putnam Valley refers to Living Spring's use of the property as a "commercial enterprise." They also attempt to color the argument by referring to the reconditioning center as

a "health spa."[2] But the courts below did find the activities to be a commercial enterprise or the center a "spa."

Over 50 years ago this Court rejected respondents' "commercial" argument. Justice Reed in his dissent in *Murdock v. Pennsylvania*, 319 U.S. 105, 132 (1943), concluded "even if the distribution of religious books was a religious practice protected from regulation by the First Amendment, certainly the affixation of a price for the articles would destroy the sacred character of the transaction." He argued:

> Many sects practice healing the sick as an evidence of their religious faith or maintain orphanages or homes for the aged or teach the young. These are, of course, in a sense, religious practices but hardly such examples of religious rites as are encompassed by the prohibition against the free exercise of religion.

Id. at 132. But the *Murdock* majority rejected such a narrow view of which activities are sectarian and which are secular and which practices are religious and which are commercial. *Id.* at 111.

More recently in *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987), this Court dealt with the constitutionality under the Establishment Clause of the statutory exemption of religious organizations from Title VII's religious discrimination proscriptions. The case involved a Title VII claim made by an assistant building engineer at a

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[2]A "spa" has been defined as "1. A mineral spring. 2. A resort area having mineral springs. 3. A fashionable hotel or resort." *The American Heritage Dictionary* 1169 (2d college ed. 1982).

gym operated by the Mormon Church. Justice Brennan expressed concern about the constitutional difficulty involved in "the application of a religious-secular distinction." 483 U.S. at 343 (Brennan, J., concurring in the judgment). He suggested that a line be drawn between profit and nonprofit corporations stating "[i]n contrast to a for-profit corporation, a non-profit organization must utilize its earnings to finance the continued provision of the goods or services it furnishes, and may not distribute any surplus to the owners." *Id.* at 344.

In a statement which is helpful in understanding why the line drawn for tax exemption should not exclude Living Springs' activities, Justice Brennan reasoned that the distinction between a profit and nonprofit corporation operated by a religious organization

> makes plausible a church's contention that an entity is not operated simply in order to generate revenues for the church, but that the activities themselves are infused with a religious purpose. Furthermore, unlike for-profit corporations, nonprofits historically have been organized specifically to provide certain community services, not simply to engage in commerce. Churches often regard the provision of such services as a means of fulfilling religious duty and of providing an example of the way of life a church seeks to foster.

Putnam Valley attempts to portray Living Springs as a profit-making business, but the record shows that each year in question Living Springs lost money. Appellate Div. J.A. at 804-810. Living Springs was able to continue its operations notwithstanding its yearly losses only because of substantial charitable donations from supporters. *Id.* at 1130.

In fact, Putnam Valley's argument is contrary to the trial

court's finding:

> As to the third requirement, the Corporate Treasurer testified that the corporation had suffered substantial losses in most of the years in question and there is no evidence of any pecuniary benefit inuring to corporate officers, members or employees.

App. at 11a.

Part of the flaw in Putnam Valley's analysis is its focus on Living Springs' reconditioning program. But the program is much broader. It includes a city evangelism training center (Appellate Div. J.A. at A-390-91), stop smoking program conducted in Adventist Churches (*id.* at A-420), a park ministry (*id.* at A-400-01), Bible seminars (*id.* at A-151), and evangelistic services (*id.* at A-731-32), as well as spiritual counseling (*id.* at A-679-80). The training center trained young people sent by Adventist Church leaders from all over the world. *Id.* at A-390-91. A representative class schedule includes classes in Adventist Church doctrine and Christian ethics. *Id.* at A-403-04.

5. As to the school district's claim that it is not a proper party, it filed a motion to dismiss which was granted. *See* Supp. App. at 3-4sa. The Appellate Division reversed, however, concluding it was a proper party. *Id.* at 5-6sa. The school district took no subsequent appeal nor did it perfect a cross-appeal after the entry of judgment.

CONCLUSION

For the foregoing reasons and for the reasons stated in the Petition for a Writ of Certiorari, this Court should grant the petition.

Dated: November 27, 1996

Respectfully submitted,

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(202) 363-1773

Counsel for Petitioner

SUPPLEMENTAL APPENDIX

SUPPLEMENTAL APPENDIX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

989-88

LIVING SPRINGS RETREAT, a Religious Corporation,

Plaintiff,

-against-

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO AND RUTH A. CLAUSE, INDIVIDUALLY AND AS ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; AND PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

ANSWER

The defendants TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO AND RUTH A. CLAUSE, INDIVIDUALLY AND AS ASSESSORS OF THE TOWN OF PUTNAM VALLEY, by their attorney, RICHARD T. BLANCATO, as and for their answer to the complaint herein, allege as follows:

1. Deny each and every allegation of the complaint herein contained in paragraphs numbered "9", "10", "11", "12", "13", "14", "15", "16", "18", "19" and "20".

2. Deny any knowledge or information sufficient to form a belief as to the allegation of the complaint herein numbered "1", "3", "4", "5", "6", "7", "8" and "17".

WHEREFORE, the said defendants demand that the complaint herein be dismissed, together with costs and disbursements.

Dated: Tarrytown, New York
July 13, 1988

RICHARD T. BLANCATO
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Town of Putnam Valley, et als.
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TO: LORENTZ W. HANSEN, ESQS.
Attorney for Plaintiff
175 Main Street
White Plains, New York 10601

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

RJI-269

Index NO. 989/88
Mot. Cal: 9/20/88

LIVING SPRINGS RETREAT, A religious Corporation,

Plaintiff,

-against-

COUNTY OF PUTNAM, TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE, Individually and as Assessors of the Town of Putnam Valley: MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY: and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendant.

DECISION

DICKINSON, J.

Motion by Defendant Mahopac Central School District to dismiss the complaint against it.

Motion is granted. As Defendant acknowledges, the law is clear that the moving Defendant has no authority to tax or grant tax exemptions. As a result, the complaint must be dismissed against it.

The foregoing shall constitute the full decision and order of this Court.

/s/ Fred A. Dickinson
J.S.C.

Dated: Carmel, New York
September 21, 1988

*LORENTZ W. HANSEN
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(Atty. for MAH. CENT. SCHOOL &
TOWNS OF CARMEL & PUT. VALLEY)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

989-88 4658s
___ AD2d ___ J/ep

Submitted - March 6, 1990

THOMAS R. SULLIVAN, J.P.
STANLEY HARWOOD
VINCENT R. BALLETTA, JR.
SONDRA MILLER, JJ.

2239E

Living Springs Retreat, etc., appellant,
v County of Putnam, et al., defendants; Mahopac Central School District of the Towns of Carmel and Putnam Valley, respondent.

DECISION & ORDER

Lorentz W. Hansen, White Plains, N.Y., for appellant.

Granik Silverman Sandberg Campbell Nowicki & Resnik, New City, N.Y.

(Robert M. Lefland of counsel), for respondent.

In an action, *inter alia,* for a judgment declaring certain parcels of real property exempt from real property taxes, the plaintiff appeals from an order of the Supreme Court, Putnam County (Dickinson, J.), dated September 21, 1988, which granted the motion of the defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley to dismiss the complaint as against it.

ORDERED that the order is reversed, on the law, with costs, the motion is denied, the complaint is reinstated as against the defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley, and its time to serve

an answer to the complaint is extended until 30 days after service upon it of a copy of this decision and order, with notice of entry.

The plaintiff commenced this action to have certain realty declared tax-exempt and to recover property taxes paid under protest. Contrary to the contention of the defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley (hereinafter the school district), we find that it was properly named as a defendant in the action. While the school district did not render the determination finding the plaintiff ineligible for tax-exempt status, the plaintiff has alleged that a substantial portion of the tax moneys paid by it consisted of school taxes collected in violation of RPTL 420-a(1)(a) and RPTL 1308. Accordingly, the school district would be liable for the return of tax moneys in the event that the plaintiff prevails in this action (*see generally, Niagara Mohawk Power Corp. v City School Dist. of City of Troy,* 59 NY2d 262; *Bethlehem Steel Corp. v Board of Educ. of City School Dist. of Lackawana,* 44 NY2d 831, *appeal dismissed sub nom City of Rochester v Waldert,* 439 US 922).

Furthermore, we find unpersuasive the school district's contention, raised on the motion to dismiss, that the plaintiff cannot maintain a plenary action for the relief sought (*see, Niagara Mohawk Power Corp. v City School Dist. of City of Troy, supra, Kahre-Richardes Family Foundation v Village of Baldwinsville,* 101 AD2d 689).

SULLIVAN, J.P., HARWOOD, BALLETTA and MILLER, JJ., concur.

ENTER:

MARTIN H. BROWNSTEIN (stamp)

Martin H. Brownstein
Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO AND RUTH A. CLAUSE, INDIVIDUALLY AND AS ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; AND PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendant

ANSWER

The defendants, TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDS AND RUTH A. CLAUSE, INDIVIDUALLY AND AS ASESSORS OF THE TOWN OF PUTNAM VALLEY, as and for their Answer to the Complaint herein, allege as follows:

FIRST: Deny any information sufficient to form a belief as to the allegations of the complaint contained in paragraph numbered "1", "3", "4", "5", "6", "7", "8", and "17".

SECOND: Deny each and every allegation contained in paragraphs of the complaint numbered "9", "10", "11", "12", "13", "14", "15", "16", "18", "19" and "20".

AS AND FOR A COMPLETE
AFFIRMATIVE DEFENSE

THIRD: Claims for property tax exemption and refund for alleged overcharps are subject to the four month limitation period applicable to Article 78 proceedings.

FOURTH: This action is barred by the four month time limitation period.

WHEREFORE, defendants demand judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: October 26, 1989
Tarrytown, New York 10591

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Attorney for Defendants
Town of Putnam Valley
and Assessor.
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TO: LORENTZ W. HANSEN, ESQ.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

INDEX NO. 1411/89

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO and RUTH A. CLAUSE, individually and as ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; AND PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

NOTICE OF MOTION TO DISMISS

JUDGE ASSIGNED: FRED A. DICKINSON

SIRS:

PLEASE TAKE NOTICE, that upon the Complaint herein, the Affidavit of Phyllis S. Jaffe, sworn to October 27, 1989 and the exhibits attached thereto, the undersigned will move this Court at the County Courthouse, Carmel, New York 10512, on November 21, 1989 at 9:30 a.m. or as soon thereafter as counsel can be heard, for an order pursuant to CPLR Rule 3211 dismissing the complaint against defendant Mahopac Central School District on the following grounds: (a) failure to state a cause of action against such defendant; (b) the issue is *res judicata;* (c) the complaint is untimely

under the statute of limitations; and for such other and further relief as this Court may deem appropriate.

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

DATED: White Plains, New York
October 30, 1989

YOURS, etc.,

PLUNKETT & JAFFE, P.C.
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TO: Lorentz W. Hansen, Esq,
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Town of Putnam Valley and
Town of Putnam Valley Board of Assessors
Defendants
Oscawana Lake Road
Putnam Valley, New York 10579

County of Putnam
Defendant
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Carmel, New York 10512

SHORT FORM ORDER

SUPREME COURT—STATE OF NEW YORK
TRIAL/SPECIAL TERM, PART , COUNTY OF PUTNAM

INDEX NUMBER 1411, 1989
MOTION DATE Nov. 28, 1989

MOTION CAL. NUMBER
TRIAL CAL. NUMBER

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM: TOWN OF PUTNAM VALLEY: RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE individually and as ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DIST. OF THE TOWNS OF CARMEL AND PUTNAM VALLEY and PUTNAM VALLEY FIRE DIST.,

Defendants.

Present: HON. FRED A. DICKINSON Justice RJI NO.

To commence the statutory time period for appeals as of right (CPLR 5513[a], you are advised to serve a copy of this order, with notice of entry, upon all parties.

The following papers numbered 1 to 16 read on this motion by defendant Mahopac Central School District to dismiss the complaint and cross motion by defendant County of Putnam for the same relief.

	PAPERS NUMBERED
Notice of Motion - Affidavits	1-2
Notice of cross motion-Affirmation	11-12
Answering Affidavits	7,14
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	PAPERS NUMBERED
Affidavits	
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Upon the foregoing papers it is ordered that this motion and cross motion are denied. The complaint sets forth a valid cause of action against each defendant (*Niagara Mohawk v Troy School District*, 59 NY 2d 262), is not barred by the doctrine of *res judicata* (see, *F.O.R. Holding Co. v Assessors of Clarkstown*, 45 AD 2d 875, app dism. 35 NY2d 959) and is not untimely (*Niagara Mohawk v Troy School District, supra*)

Defendants shall have thirty (30) days from the date of entry of this order within which to serve their answers.

Pursuant to Rule 202.12(c) of the Uniform Rules for the Supreme and County Courts, the parties are directed to complete all discovery and file a note of issue and certificate of readiness on or before June 1, 1990. Failure to comply with this Rule or to seek an extension of time from this Court will result in an order striking the above-captioned matter from its calendar. An extension may be sought only by notice of motion *or* pursuant to stipulation signed by all parties and to be "so ordered" by the Court and accompanied by an affidavit setting forth the reasons for the delay.

12/11/89 (continued)

There shall be no further motions made in this matter without the permission of the Court.

Any further motion relating to disclosure or to a bill of particulars shall contain an affirmation of good faith required by paragraphs (a) and (b) of Rule 202.7 and shall be in compliance with paragraph (c) thereof (22 NYCRR 202.7 (effectibe April 1, 1988).

A preliminary conference will be held only upon specific request therefor made in compliance with Rule 202.12 (b).

/s/ illegible
J.S.C.

Dated: Carmel, N.Y.
December 5, 1989

PLUNKETT & JAFFE, P.C. (Mahopac School District)
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LORENTZ W. HANSEN (pltf)
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Tarrytown, N.Y. 10591

LEONARD PACE, Chief Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

INDEX NO. 989/88
Assigned to Hon. Fred A. Dickinson

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM, TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE, Individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

VERIFIED ANSWER

Defendant, MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY, by its attorneys, GRANIK, SILVERMAN, SANDBERG, CAMPBELL, NOWICKI & RESNIK, ESQS., answering the complaint of the plaintiff herein, respectfully shows to the Court and alleges:

ANSWERING A FIRST CAUSE OF ACTION

1. Denies knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "1", "3", "4", "5", "6", "7",

"8", "9", "10", "11", "17" and "18" of the plaintiff's complaint.

2. Denies each and every allegation contained in paragraphs numbered "12," "13", "14", "15", "16" and "19" and "20" of the plaintiff's complaint.

AS AND FOR A FIRST COMPLETE AFFIRMATIVE DEFENSE

3. The complaint fails to state a cause of action against defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley in that defendant has no authority to determine assessments of real property or exemptions from real property taxes.

AS AND FOR A SECOND COMPLETE AFFIRMATIVE DEFENSE

4. The complaint is barred by the Statute of Limitations.

AS AND FOR A THIRD COMPLETE AFFIRMATIVE DEFENSE

5. The plaintiff has not conducted its activities and use of the subject real property exclusively for religious and/or benevolent purposes so as to entitle plaintiff to real property tax exemption under Article 4 of the Real Property Tax Law.

WHEREFORE, defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley demands the complaint be dismissed, together with the costs and disbursements of this action.

Dated: New City, New York
April 24, 1990

GRANIK SILVERMAN SANDBERG
CAMPBELL NOWICKI RESNIK
Attorneys for Defendant

MAHOPAC CENTRAL SCHOOL DISTRICT
OF THE TOWNS OF CARMEL AND
PUTNAM VALLEY
254 So. Main Street
New City, NY 10956
(914) 634-8822

TO:

LORENTZ W. HANSEN, ESQ.
Attorney for Plaintiff
175 Main Street
White Plains, New York 10601
(914) 948-3908

STATE OF NEW YORK)
)ss.:
COUNTY OF ROCKLAND)

I, the undersigned, am an attorney admitted to practice in the courts of New York State and say that I am the attorney of record, or of counsel with the attorneys of record, for the defendant. I have read the annexed Answer, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

All books, records, correspondence, etc. in my possession.

The reason I make this affirmation instead of defendant is because it does not maintain offices in the county wherein I maintain my offices.

I affirm the foregoing statements are true under penalties of perjury.

Dated: New City, New York
April 24, 1990

/s/ David W. Silverman
DAVID W. SILVERMAN